

BALTIMORE, MD.

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M - 164,621

E - 189,871

S - 323,624

Approved For Release 2005/07/13 : CIA-RDP74B00415R000400170028-6

JUN 1 1972

Former Agent Seeking Reversal Of Ruling Barring Book On CIA

By James P. Day

A former employee of the Central Intelligence Agency asked a federal appeals court here yesterday to reverse a lower court decision enjoining him from publishing a book about the ultra-secret activities of the agency.

In a case that could lead to a further lowering of abstract bars guarding classified government information, Victor L. Marchetti, the former CIA employee, claimed the government and lower courts have violated his freedom of the press rights.

Melvin L. Wulf, a New York American Civil Liberties Union lawyer representing Mr. Marchetti, argued yesterday that the federal government cannot deny its employees' First Amendment rights by having them sign oaths promising not to divulge classified information.

Termed Secret

During the hour-long hearing before three judges from the Fourth Circuit Court of Appeals, Irwin Goldbloom, a Justice Department attorney, contended that secrecy agreements signed by Mr. Marchetti in 1955 and 1959 are binding contracts forbidding him from revealing classified information.

"In our opinion, your honors, this case is merely a contract case," Mr. Goldbloom said in using the same line of argument that was successful before Judge Albert V. Bryan, Jr., a Virginia federal judge who issued the injunction May 19.

Judge Bryan had ruled that Mr. Marchetti, who rose through the CIA ranks to a position of assistant to the deputy director, had sacrificed his constitutional right to freedom of the press when he signed the secrecy agreements at the start and end of his 14-year tenure with the agency.

However, Mr. Wulf said previous federal court rulings have held that, although employees of private companies may be

forced to waive their rights as a condition of employment, governmental employees cannot be forced to do this.

He urged the appeals court to follow the decision of the Supreme Court in the New York Times-Pentagon papers case, a ruling that held the government responsible for proving that immediate and irreparable damage to national security would result from the airing of classified information before the publication of such information could be stopped.

In that case, the court reviewed newspaper articles prepared for publication and heard testimony behind closed doors

on their possible effect on the national security before allowing the Times to publish them.

Under current CIA procedures, employees and former employees must obtain the approval of the agency's director before revealing classified information and there are no provisions for appealing the decision of the director, currently Richard Helms.

Mr. Goldbloom argued yesterday that judges lack the necessary expertise to safely determine what specific secret information would be harmful and that these questions must be handled by the executive branch of the government.

Neither yesterday's hearing nor written briefs shed any light on what information Mr. Marchetti wants to publish in his nonfiction book nor what specific information is contained in sealed documents given to the court earlier.

However, Mr. Wulf may have given an indication of the tone of the book when he told the judges his client must have the right "to say openly that the agency is too large, that it participates in activities the public and Congress never know about" and that it is too deeply involved in "overt activities."

Marchetti

DAILY WORLD

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Civil liberties group challenges gag on ex-CIA aide's writings

BALTIMORE: May 31 --The American Civil Liberties Union Foundation will argue the appeal of ex-CIA aide Victor L. Marchetti tomorrow (Wednesday) afternoon before the U.S. Court of Appeals for the Fourth Circuit in Baltimore.

The U.S. District Court has issued a permanent injunction forbidding Marchetti from publishing any material "in any manner" without first clearing it with the CIA because of a secrecy agreement between the agency and its aides which bars them from unauthorized disclosure of any information on intelligence activities.

Marchetti has written at least one magazine article and is writ-

ing a book critical of the CIA.

The ACLU Foundation claims that agreement violates First Amendment rights as a condition of employment.

Its brief cites also a series of Supreme Court opinions holding that citizens in a democracy have an inalienable right to receive the kind of political information the government is trying to keep secret.

Marchetti's ACLU Foundation attorneys are Melvin L. Wulf, Sanford J. Rosen, John Shattuck and Philip J. Hirschkop. Wulf, ACLU Foundation legal director, will argue the case.

The action is financed by the ACLU Foundation, an affiliate of, but separate from, the ACLU.